



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: CWA - 206149

PRELIMINARY RECITALS

Pursuant to a petition filed on September 1, 2022, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on December 20, 2022, by telephone. The hearing was rescheduled three times at the request of petitioner and his representative, with the original hearing date scheduled for October 25, 2022.

The issue for determination is whether the Department of Health Services properly disenrolled petitioner from the IRIS program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: Alexa Butzbugh
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Dane County who lives with his adult brother and mother. The mother has been out of the home since at least June, 2022 attending to her own medical issues. Exhibits A and C.
2. Progressive Community Services has been petitioner's IRIS Consultant Agency (ICA) since February 1, 2018. Exhibit A.
3. The IRIS program provides petitioner transportation and supported employment. The brother and mother provide petitioner assistance in the home with his ADLs and IADLs. Exhibit C.
4. On August 23, 2022, the Department issued petitioner a Notice of Action, indicating his IRIS enrollment was being terminated effective September 2, 2022. The Notice provided the following explanation for the action:

Specifically, you have been unwilling to allow your IRIS Consultant (IC) to enter your home since your enrollment in the IRIS program. Chapter 7 of the IRIS Policy Manual states that the Department of Health Services reserves the right to disenroll participants for health and safety risks that the participants are unable to [or] unwilling to resolve. This is defined as "issues herein the ICA is unable to ensure the health and safety of the participant as required by the 1915 (c) Home and Community-Based services (HCBS) Waiver." You have refused all of your IC's attempts to complete a home visit to ensure your home is a healthy and safe place, with the last attempt on 8/22/22.

5. On September 1, 2022, petitioner filed a timely appeal with the Division of Hearings and Appeals (DHA).

DISCUSSION

The petitioner's mother acted as his representative at the hearing. She indicated that they have denied the ICA access to the home on grounds that it violates their privacy. She further indicated that petitioner only receives IRIS services outside the home. Specifically, transportation services and supported employment.

It is the position of the ICA and Department that petitioner's failure to grant access to his home implicates health and safety concerns. It is their position that they have an obligation to ensure petitioner's home is an appropriate, healthy, and safe place for petitioner. Such cannot occur if they are denied access to the inside of the home.

The record indicates that petitioner and his mother have denied the ICA access to their home on multiple occasions. The most recent denial of entry occurred in August, 2022. Petitioner was informed at that time that he would be disenrolled from IRIS if he continued to deny the ICA access to his home. I would also note that the hearing in this matter was rescheduled three times at the request of petitioner and his mother. Both were involved in the phone conference with the administrative law judge and the representative for the ICA when selecting the current hearing date. During that call the ICA representative informed the petitioner and his mother that the IRIS disenrollment action would be withdrawn if they allowed access to the home prior to the new hearing date. It is my understanding that access was not granted.

The IRIS program is a Medical Assistance (MA) home and community-based long term care waiver program authorized under §1915(c) of the Social Security Act. The program permits a state to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community

and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waivers target population. The waiver approved by the Centers for Medicare and Medicaid Services (CMS) which provides the program's authority is available at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. State policies governing administration of the IRIS program are included in the IRIS Policy Manual (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>).

The CMS-approved waiver application provides the following authority to the Department to involuntarily disenroll IRIS participants:

Because the waiver targets only participants who elect to direct their services, the following are reasons a participant may be involuntarily disenrolled from IRIS:

1. Failure to utilize IRIS funding (not spending funds in the budget);
2. Loss of financial eligibility, including falling into cost share arrears;
3. Loss of functional eligibility, including expiration of long-term care functional screen;
4. Mismanagement of Budget Authority responsibilities (misappropriation of funds);
5. Mismanagement of Employer Authority responsibilities;
6. Unable to contact for an extended period of time;
7. Health and safety cannot be assured;
8. Substantiated fraud;
9. Movement to an ineligible living setting; and
10. Material noncompliance with IRIS program requirements outside of reasons above.

Application for 1915(c) HCBS Waiver: WI.0484.R03.00-January 01, 2021, pg. 202 of 274. Consistent with the language in the waiver application, the IRIS Policy Manual allows for disenrollment for "health and safety risks that participants are unable or unwilling to resolve." IRIS Policy Manual, §10.1.

The Department has an obligation to ensure the health and safety of IRIS participants. HCBS Waiver, pg. 7, and IRIS Policy Manual, §6.4. This is achieved, in part, by placing requirements on the ICA in implementing and monitoring aspects of the IRIS program.

IRIS rules require the ICA to monitor the IRIS participant's plan to ensure, in part, the health and safety of the participant and to make sure services are being provided appropriately. IRIS Policy Manual, §5.5C.1. Of note, the contract between the ICA and Department further requires the ICA to conduct at least one in-person visit per year "...in the participant's home." IRIS Provider Agreement between the Department and ICA, effective 1/1/2021-12/31/22, pg. 85, found online at: <https://www.dhs.wisconsin.gov/iris/iris-2021-provider-agreement-generic-final.pdf> (*emphasis added*). This is consistent with the requirement that the ICA "[m]onitor, report, and address issues of budget management and/or abuse, conflict of interest, and health and safety issues." *Id.* at pg. 87. Moreover, the Waiver also requires the ICA to "... effectively assure[] the participant's health and safety and that the participant's needs are assessed, outcomes developed, and services and supports coordinated to address assessed needs and associated outcomes." HCBS Waiver, pg. 5. To that end, the Waiver requires the ICA to: "[c]onduct *home visits* with assigned participants and their support system to develop a comprehensive self-directed Individual Support and Service Plan (ISSP)[]"; "[m]onitor participants' physical, environmental, and social needs and identify and respond accordingly to participant health and safety risks[]"; and "[c]onduct risk assessment and management, including identifying and helping the

participant mitigate risks, including challenging behaviors, medical treatment, falls, environmental hazards, egress issues, and others.” Id at pg. 19 (*emphasis added*).

The IRIS Participant Handbook, which the ICA representative indicated was provided petitioner, further indicates that is the participant’s responsibility to allow “...IRIS access to information it needs to maintain your eligibility or to serve your long-term-care-related needs.” IRIS Participant Handbook, pg. 19-20, which can be found online at: <https://www.dhs.wisconsin.gov/publications/p01008.pdf>.

The above-cited requirements make it clear that the Department and ICA have an obligation to ensure the health and safety of IRIS participants. This is achieved, in part, by the ICA monitoring and assessing the needs of the participant. This extends to ensuring the participant’s home affords him an appropriate, healthy, and safe environment. That the ICA is required to make such an assessment is further reinforced by the specific requirement that it conduct an in-person visit in the participant’s home at least once per year. This allows the ICA to identify and assess health and safety concerns, which includes identification of environmental hazards, egress issues, and other potential risks to the participant. The petitioner and his mother have been informed of the ICA’s need to conduct a monitoring visit inside petitioner’s residence and repeatedly refused to grant access.

Based on the foregoing, I find the Department acted within its authority in disenrolling petitioner from the IRIS program on grounds that his refusal to grant the ICA access to his home implicated health and safety concerns that he was unwilling or unable to resolve.

Disenrollment from the IRIS program does not necessarily mean that petitioner is ineligible for all services; petitioner might have to apply for Family Care or another program. He may also be permitted reentry into the IRIS program if he grants the ICA access to his home for a monitoring visit.

CONCLUSIONS OF LAW

The Department of Health Services acted within its authority in disenrolling petitioner from the IRIS program.

THEREFORE, it is

ORDERED

That the petitioner’s appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

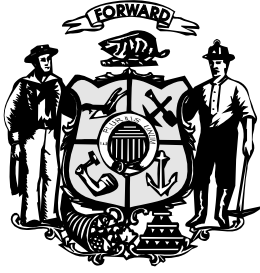
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 12th day of January, 2023



Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 12, 2023.

Bureau of Long-Term Support